REMARKS/ARGUMENTS

Claims 4 and 9 were rejected under 35 U.S.C. § 112 as not clearly defining whether the liquid phase binder in those claims was the same as in claim 1. Claims 4, 5 and 9 have been amended to refer to it as a liquid phase binder consistent with claim 1 as it is the same liquid phase binder.

All of claims 1-9 were rejected under 35 U.S.C. § 102(b) or 103(a) over an Australian patent application or its U.S. equivalent patent to De Toffol. Reconsideration is requested.

Claim 1 includes a step of "allowing the microspheres to flow to the top of the mixture" and also includes a step of "draining excess liquid phase binder from the mold". The De Toffol references neither show nor suggest these steps as the references teach a quite different method.

In the method disclosed in the two De Toffol references, the microspheres are evenly or uniformly mixed within the liquid phase binder and therefore do not float to the top of the mixture and do not achieve the packing achieved by the present invention, which results in low syntactic foam densities as described in the present specification at page 4, line 17 to page 5, line 9.

That De Toffol has a different aim and uses a different method in manufacturing syntactic foam is shown *inter alia* in claim 30 of De Toffol's U.S. patent which defines a foam "wherein the total interstitial void space is greater than the total microsphere void space." This is a different result and based on a different objective from the present invention as the invention seeks to provide a close packed array of microspheres, that is one where the total interstitial void space is less than the total microsphere void space, as seen in Figures 1C and 1D of the present application. Although the foregoing specific packing features are not recited in or meant to be or required the claims, they result from the method.

With respect to the second draining step mentioned above, De Toffol describes the use of a porous wick to absorb excess liquid phase binder from the mold, rather than draining the excess binder as described and claimed. Applicant's draining of the liquid in the manner described and claimed enables the formation of the close packed array of microspheres as the end product. Use of a wick to absorb excess in this manner might not achieve the same claimed result and acts in a quite different manner. Hence, not only is the method claimed different from the prior art, but it

produces a different result, although no result beyond that recited in the claims is intended to be included in the claims. Absorbing with a porous wick is not the claimed "draining."

The Office Action states that the process of soaking the liquid phase inherently results in microspheres floating to the top of the mixture. Absorbing is not draining. There is no disclosure in De Toffol of the floating of the mixture to the top. Instead, the contrary disclosure of even mixing in De Toffol does not show or suggest claim 1 and all of the other claims dependent thereupon. For the same reason, the resulting foam article produced by the method of claim 1, as recited in claim 9, would be different in its final appearance than the product in De Toffol, because of the positions of the microspheres and the presence of the microspheres floated to the top of the mixture would distinguish claim 9 from De Toffol as well.

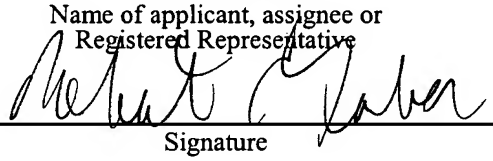
As to claims 2 and 3, the floating per se brings about a result that the uniform mixing recited in De Toffol would not. Similarly, the draining from the bottom of the mold until the close packed microspheres reach the bottom as in claim 8 are not be suggested in the De Toffol references.

For the foregoing reasons, it is submitted that all of claims 1-9 are distinguishable from and allowable over De Toffol, under both of sections 102 and 103.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 28, 2005:

Robert C. Faber

Name of applicant, assignee or Registered Representative



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November 28, 2005

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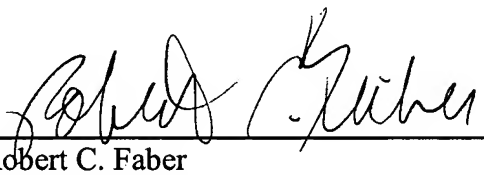
Respectfully submitted,



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